

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	CASE NO: 09-54744
)	Chapter 13
Mark James Apana)	
)	
Gretchen Beth Apana)	
)	
Debtor(s).)	Judge Marilyn Shea-Stonum
)	
)	ADV NO:
Mark James Apana)	
Gretchen Beth Apana)	<u>COMPLAINT TO DETERMINE</u>
93 Beech Ave.)	<u>THAT CLAIM OF CHARTER</u>
Northfield Village, OH 44067)	<u>ONE IS AN UNSECURED CLAIM</u>
)	
Plaintiffs)	
)	
v.)	
Charter One)	
I Citizens Drive)	
Riverside, RI 02915)	
)	
Defendant)	

Mark James Apana and Gretchen Beth Apana, the plaintiffs herein, by and through the undersigned counsel, for their complaint against Charter One, allege as follows:

1. This is a core proceeding over which this Court has jurisdiction under 28 U.S.C. Sec. 157(b).
2. The plaintiffs are debtors in this chapter 13 case. The defendant, Charter One, claims or may claim to hold a secured claim against the debtors by virtue of a mortgage

dated March 31, 2007 between the plaintiffs as mortgagors and Charter One as mortgagee. This mortgage is designated as reception number 55438672 in the records of the Summit County Ohio Fiscal Officer, recording division, and was filed for record on May 3, 2007. Upon information and belief, the plaintiffs state that they owe an approximate principal balance of \$24,178.52 on this indebtedness.

3. The alleged mortgage owed by the plaintiffs to the defendant is a third mortgage on the plaintiffs' residential real estate located at 93 Beech Avenue, Northfield Village, Ohio.

4. Third Federal holds the first mortgage encumbering the debtors' above-mentioned real estate upon which the debtors owe an approximate principal balance of \$110,121.04. Charter One holds the second mortgage encumbering the debtors' above-mentioned real estate upon which the debtors owe an approximate principal balance of \$30,100.61.

5. The value of the plaintiffs' real estate, according to the appraisal of the Summit County, Ohio Fiscal Officer, attached hereto as Exhibit "A," is \$118,640.00.

6. Under the reasoning of *Lane v. Western Interstate Bancorp (In re Lane)*, 280 F.3d 663 (6th Cir. 2002), the plaintiffs' third mortgage obligation to the defendant is a wholly unsecured claim, and, as such, is subject to lien stripping.


WHEREFORE, the plaintiffs request the entry of an order declaring that their obligation owed to the defendant secured by the alleged third mortgage referred to above is a wholly unsecured claim and should be allowed and paid as a general unsecured claim in this case by the chapter 13 trustee. The plaintiffs further are entitled to a judgment

declaring that the above-referenced third mortgage is null, void and without any legal effect whatsoever.

/s/ Robert M. Whittington, Jr.

Robert M. Whittington, Jr. 0007851
Attorney for the Plaintiffs, Mark James Apana and
Gretchen Beth Apana
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Fax (330) 384 8953
E-mail elkwhitt@neo.rr.com

6

 4009219
Page: 1 of 8
08/17/1998 02:27P
RLC 0.00
JAMES B MCCARTHY SUMMIT CO AUDITOR

Certificate of Title

CDUC

No. 57160

Date APRIL 7TH, 19 92

MARK APANA & GRETCHEN B APANA

Owner.

Original in Book 216

Page 57160 of Land

Title Registers of Summit County, Ohio



(form 88 - Sec. 25)
TRANSFER CERTIFICATE OF TITLE

CERTIFICATE NO.: 57160

Doc. No.: 196174
Date: 4-7-92
Time: 1:46 PM

Transferred From: Steven K Keeney
Joyce Keeney
Former Certif. No.: 57011
Original Registration: August 7, 1919 @ 9:00am, Book 3, Page 1283

THIS IS TO CERTIFY,

That, Mark Apana & Gretchen B Apana, husband and wife, aged full - full years, respectively, under no disability, who reside in the County of Summit and State of Ohio, and whose p.o. address is 93 Beach Avenue, Northfield, 44067 are the owners in fee simple, unto the said Grantees, and to the survivor of them, his or her heirs and assigns, of land situated in the Village of Northfield, County of Summit and State of Ohio, and known as:

Being Sublots 32 & 33 of R B Hartwig's Liberty Park Subdivision of original Northfield Township Lot 42, as shown by the recorded plat in Volume 25 of Maps, Pages 14 and 15 of Summit County Records.

Being all premises in Certificate #57011
PP #NF-238-04-003.000 & 004.000 41-00793 & 2
aka -----

The following restrictions are a part of the conditions of above sale:

1. No residence or building can be built upon said lot of less value than \$5000.00 for lot 32 & \$3000.00 for lot 33, except a garage, which must be built on rear line of said lot.
2. All buildings must be set back 20 feet from the front line.
3. No intoxicating liquors can be sold on said premises or buildings put up for such purpose.

Except conditions of record and taxes and assessments for the first half of 1992 and thereafter.

CERTIFICATE NO. 57160



Consideration \$89,000.00

Tax Fee \$ 356.00

XXXXXXXXXXcg

Subject to the exceptions mentioned in section twenty-five of the Act of May 6, 1913, O.L. 1914, providing for the registration of land titles and subject to the lesser estates and interests, liens, charges, and incumbrance mentioned and described in the Memorials indorsed hereon or on the sheet of Memorials attached hereto.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal this 7th day of April, 1992, at 1:46 o'clock PM.

Entered in Registration Book 216 Page 57160

RALPH JAMES, RECORDER OF SUMMIT COUNTY, OHIO

by: C. Gitter Deputy

CERTIFICATE NO. 57160



Memorials of the Lesser Estates in and against the Lands described in Certificate of Title issued to Mark & Gretchen B Apana No. 57160

1. Doc. No. (sec. 38): 196175
2. Kind (secs. 49, 50): Mortgage filed in duplicate
3. Favor Of (secs. 80, 81, 82): Third Federal Savings & Loan Assn, Cleveland
4. Against & Terms (sec. 48): "O", \$67,000.00, March 28, 1992.
Pay. mo. instals. according to terms of note. Due & Pay. 30 years from the date hereof. Sales clause.
Open end mortgage.
See document
5. Date of Instrument: March 28, 1992
6. Registered Date: April 7, 1992 @ 1:50 PM
7. Recorded Vol. & Pg. (secs. 49, 50, 86): Filed in duplicate
Ralph James
Recorder
By *C. Hutter*
Dep. Recorder
8. Assigned (secs. 51, 80):
9. Continuation (sec. 86): 32 33 Hartwigs Lib Park Sub
Ralph James
Recorder
By *C. Hutter*
Dep. Recorder
10. Cancelled (sec. 52, 58, 86):

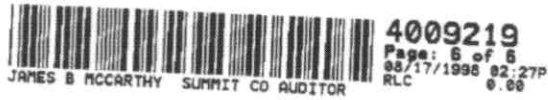
CERTIFICATE NO. 57160



Memorials of the Lesser Estates in and against the Lands described in Certificate of Title issued to Mark & Gretchen B Apana No. 57160

1. Doc. No. (sec. 38): 206267
2. Kind (secs. 49, 50): Mortgage - Filed in duplicate
3. Favor Of (secs. 80, 81, 82): Third Federal Savings & Loan Assn of Cleveland
4. Against & Terms (sec. 48): "O", \$71,100.00, June 9, 1994.
Pay mo instals according to terms of note. Due & pay 30 years from the date hereof. Sales clause. Open end mtg. See document.
5. Date of Instrument: June 9, 1994
6. Registered Date: June 14, 1994 @ 1:22 PM
7. Recorded Vol. & Pg. (secs. 49, 50, 86): Filed in duplicate
Ralph James
Recorder
By *Ralph James*
Dep Recorder
8. Assigned (secs. 51, 80):
9. Continuation (sec. 86): 32 33 Hartwigs Lib Pk Sub
Ralph James
Recorder
By *Ralph James*
Dep Recorder
10. Cancelled (sec. 52, 58, 86):

CERTIFICATE NO. 57160



Memorials of the Lesser Estates in and against the Lands described in
Certificate of Title issued to Mark & Gretchen B Apana No. 57160

1. Doc. No. (sec. 38): 213762
2. Kind (secs. 49, 50): Mortgage
3. Favor Of (secs. 80, 81, 82): Third Federal Savings & Loan
Association of Cleveland
4. Against & Terms (sec. 48): "O", \$20,000.00, April 20, 1996.
Pay. according to terms of the
Credit Agreement. Sales clause.
Open end mortgage.
See document
5. Date of Instrument: April 20, 1996
6. Registered Date: May 1, 1996 @ 2:07 PM
7. Recorded Vol. & Pg.
(secs. 49, 50, 86): Torrens Records
Vol. 193, Pg. 421-425
Ralph James
Recorder
By *Ralph James*
Dep. Recorder
8. Assigned (secs. 51, 80):
9. Continuation (sec. 86): 32, 33 Hartwig's Lib Park Sub
Ralph James
Recorder
By *Ralph James*
Dep. Recorder
10. Cancelled (sec. 52, 58, 86):

CERTIFICATE NO. 57160

E X H I B I T A

Print

Pay by Phone

Pay On-Line

John A. Donofrio

Fiscal Officer, County of Summit

Note: This is a live file and is subject to constant change.

PrintIAS4 - INTEGRATED ASSESSMENT SYSTEM REVIEW DOCUMENT
Summit County Auditor Division, OH - Tax Year 2008Reference Year
OCT 09, 2009
03:15 PM**BASIC INFORMATION FOR PARCEL 4100793**

PARCEL 4100793
 OWNER APANA MARK & APANA GRETCHEN B
 OWNER
 DESC. LIBERTY PK LOT 32 ALL
 DESC.
 DESC. LUC 510
 ADDR. 93 BEECH AVE, NORTHFIELD 44067-
 SPEC FLAG R - SINGLE FAMILY DWELLING, PLATTED
 HOMESTEAD CLS R
 DISTRICT 41 NORTHFIELD VILL- NRD HLS CSD NBR 20900001
 INTER-COUNTY 77-0350

LAND FOR PARCEL 4100793

CODE	ACTUAL	BASE	DEPTH	UNIT	DEP/FAC	INCR/DECR	INFLUENCE	INFLU%	VALUE
01	40	40	124	525	91	260/260			19110

LOT CODE: 01 = HOUSE LOT

RESIDENTIAL CARD 1 OF 1 FOR PARCEL 4100793

STYHT	1	HT/AC	CENTRAL
CONST	ALUMINUM/VINYL	FUEL	GAS
MSRY TRIM		SYSTEM	
TYPE	RANCH	ATTIC	NO
YR BUILT	1964	FINBSMT	
EFF YR		REC RM	
YRREMDLD		FRP PREFB	
TOT RM	5	FRPL OP/ST	
BEDRM	3	BSMT GAR	
FAMLYRM		PHYSICAL	69
FULL/BTH	1	FUNC DEP	
HALF/BTH	1	FUNC RSN	
TOT FIXTRS	7	ECON DEP	
BSMT	FULL	ECON RSN	
GFLA	1310	GRADE	105
SFLA	1310	COND (CDU)	GOOD
		PCT CMPL	(100%)
		DWELLING VAL	95820

DESCRIPTION: RANCH ALUMINUM/VINYL 1 STORY WITH 1310 SQ FT GROUND FLOOR LIVING AREA AND 1310 TOTAL SQ FT LIVING AREA, BUILT ABOUT 1964. IT HAS 5 TOTAL ROOMS WITH 3 BEDROOMS, 1 FULL BATHROOM, 1 HALF BATHROOM, A FULL BASEMENT, HEATING IS CENTRAL AND THE OVERALL CONDITION IS GOOD. THE "ADDN MISC FEATURES" VALUE WAS DERIVED FROM THE PLUMBING (2000).

**ADDITION CODES:**

LN LW 1S 2N 3R AREA %COMP VALUE
B 13 432 10210

ADDITIONS:

LINE B FIRST FLOOR FRAME GARAGE

SECONDARY:

CODE	YR BLT	SQ FT	MODS	CD	%GOOD	%COMP	FUN UNIT	FUN/RS	ECO/RS	RCNLD
RS1	1970	140		A	45		1			990
WD1	1996	360		A	62		1			2730

RS1 = SHED FRAME UTILITY
WD1 = WOOD DECK

SUMMARY ALL CARDS FOR PARCEL 4100793

LAND: 19110	BUILDING: 99540	TOTAL: 118650
ASSESSED LAND: 6690	ASSESSED BLDG: 34840	ASSESSED TOTAL: 41530

SALES INFORMATION FOR PARCEL 4100793

DATE	DOC#	GRANTOR	AMT	SALE	DESC	PARCELS
07-APR-92	04787	KEENEY STEVEN K & JOYCE	89000	1	VALID	2

PERMITS

DATE	PERMIT #	AMOUNT	DESCRIPTION	O/C
23-OCT-06	1693	4000	SIDING	C
01-JAN-97	4100793		DECK	C
13-JUN-96	2119	3000	SWIMMING PO	C

Print

Pay by Phone

Pay On-Line

2008 SUMMARY INFORMATION FOR PARCEL 4100793

MAILING ADDRESS
APANA MARK & GRETCHEN B
93 BEECH AVE
NORTHFIELD, OH 44067

APPROAISED VALUE 118,650
TAXABLE VALUE 41,530
BANK CODE 02132 THIRD FEDERAL SAVINGS & LOAN
TREAS CODE
CUR YR REFUND
PRI YR REFUND

LUC 510
CLASS R
2.5% Y
HMSTD N
CAUV N
FOREST N
STUB 41102072
CERT YEAR N
DELQ CONTRACT N
BANKRUPTCY N

Beginning Tax Duplicate

	Where Do My Tax Dollars Go?	Voter Approved Levy Tax
	First Half Charges	Second Half Charges
Realestate	997.44	997.44
Special Assessment	0.00	0.00
Total	997.44	997.44
Due Date	FEB 20, 2009	JUL 17, 2009

Total Tax Amount Due Reflects Payment & Adjustment To Date

	DELQ	1st HALF	2nd HALF
TOTAL REAL ESTATE AND SPECIAL CHARGES	0.00	997.44	997.44
P & I & ADJ	0.00	0.00	0.00
PAYMENTS	0.00	-997.44	-997.44
AMOUNT DUE	0.00	0.00	0.00
YEARLY AMOUNT DUE:			0.00

2008 TAX BILL DETAILS FOR PARCEL 4100793

DATE	SETTLE	PROJ. #	ACTION / CODE	1st HALF	2nd HALF
31-DEC-08	1		DUP/ORG	1866.36	1866.36
31-DEC-08	1		DUP/RED	-727.45	-727.45
31-DEC-08	1		DUP/ADJ	1138.91	1138.91
31-DEC-08	1		DUP/RLB	-113.89	0.00
31-DEC-08	2		DUP/RLB	0.00	-113.89
31-DEC-08	2		DUP/HRB	0.00	-27.58
31-DEC-08	1		DUP/HRB	-27.58	0.00
04-FEB-09	1		PAY/CHG	-997.44	0.00
22-JUN-09	2		PAY/CHG	0.00	-997.44

DELQ REAL ESTATE & ASSESSMENT TAX: 0.00
ADJUSTMENT: 0.00
DECEMBER INTEREST: 0.00
AUGUST INTEREST: 0.00

TOTAL 0.00

REAL ESTATE CHARGES: 997.44 997.44

SPECIAL ASSESSMENT CHARGES:		0.00	0.00
ADJUSTMENT:		0.00	0.00
TOTAL CHARGES:		997.44	997.44
PAYMENTS:	<u>DATE</u>	<u>TYPE</u>	
	04-FEB-09	NML	-997.44
	22-JUN-09	NML	-997.44
TOTAL PAYMENTS:		-997.44	-997.44
FH/SH AMOUNT DUE:		0.00	0.00
SPECIAL ASSESSMENT:			
PROJECT	NAME	END	1st HALF 2nd HALF

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